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E. Steven Dell
Vice President-Corporate
and Government Affairs

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December 30, 1980

Mr. Richard McCall
Assistant Secretary of State
Bureau of International
Organization Affairs
Department of State
Washington, D.C. 20520

Dear Mr. Secretary:

Thank you for arranging the meetings on December 11 during which the U.S. Industry could state its views and exchange opinions on the WHO draft code of marketing with you and other members of the Department as well as with representatives of other branches of the Government.

As you will have gathered, our concerns are manyfold but uppermost is the shared perception on the importance of a voluntary code under Article 23 of the WHO constitution. We trust that the U.S. delegation while in the role of an observer at the upcoming WHO Executive Board meetings will make its position known beyond any doubt.

As for the draft code under consideration, we have examined it carefully and found it unacceptable for many reasons. It appears that other U.S. companies have reached the same conclusion and so has the International Council of Infant Food Industries whose members include the principal infant formula producers in Britain, Denmark, France, Japan, the Netherlands and Switzerland. Other major makers in Germany, India, Indonesia, Spain and Sweden either expressed their disagreements on the basis of previous drafts, were not consulted or declined to participate in the process whereby WHO drafted the proposed code.

Our reasons for finding this fourth draft code totally unacceptable are too numerous to recite. However, cardinal among these are the following:

Industrialized and Developing Countries

Neither the preamble nor the articles distinguish between the socio-economic, cultural, health and nutrition related differences in the populations of industrialized nations and the developing countries.

The code therefore is written to accommodate the lowest common denominator leaving governments to have to dissent or disclaim applicability for the unsuitable provisions in the code. In addition, the failure to recognize far reaching socio-economic and health related differences places industry into a myriad of unwarranted complications because of the need to explain the many discretionary decisions which will have to be made in different settings.

Professional Samples

Articles 5.2 and 7.4 conflict with the accepted ethical practice whereby the health industries provide limited quantities of their products to qualified health professionals for use at their discretion in caring for their patients.

Article 7.4 furthermore impugns the professional judgement and competence of qualified health workers while suggesting that infant formula in the hands of doctors or nurses is harmful in and by itself. There is no evidence to support this latter assumption nor that the availability of professional samples contributes in anyway to infant malnutrition.

Professional Service Representatives

Article 6.4 and 8.2 prohibit industry from providing the services of trained, competent personnel to inform pregnant women or mothers or assist them in the appropriate and correct use of its products. Since these services are provided by our company only at the request of or with the prior approval of responsible health professionals, we hold firmly that we should be allowed to provide such services when permitted by the health authorities of the countries concerned.

We consider Article 6.4 and 8.2 an unwarranted intrusion into the health services of sovereign states as well as an interference with the industry's often stated obligations to provide information for the correct use of its products.

Compensation for Industry Employees

Article 8.1 of the draft code intervenes in employer/employee relations including the methods of compensation which are entirely unrelated to infant feeding per se.

The functions of sales personnel relate to commercial practices designed to further the sales of products in competition with other makers of infant formulas or with different and less nutritious foods for infants. These sales activities are completely separate and apart from the decisions how mothers feed their infants.

These are but four of the major reasons why we cannot support or implement the proposed code. While the document cites health related principles in its preamble as well as in the aim of the code, it addresses a wide range of commercial matters in its articles. We find many unacceptable provisions, inconsistencies, ambiguities and serious errors including quite faulty definitions in the present draft.

We support the policies of the United States Government to lend support to measures which will improve infant nutrition. American companies have already adopted policies and marketing practices aimed to achieve those same objectives. We see the WHO fourth draft code as a regrettable document with an open anti-industry bias. Its primary goal seems to be the imposition of restraints and prohibitions on industry rather than to make positive provisions for the improvement of infant feeding including the correct and proper use of modern, scientifically prepared infant formula where indicated. Also, the code would in our view, establish an alarming precedent whereby WHO, without the benefit of any serious inquiry into the underlying facts, would promulgate a detailed code of conduct attempting to regulate several industries, entire health care systems and the personnel employed therein, apparently without regard for the potential disruptions which may be caused by this action.

In the light of past events and our deliberations of December 11th, we consider the discussions at the forthcoming WHO Executive Board of great importance and wish to offer our assistance and cooperation with the U.S. delegation both in Washington as well as during the proceedings in Geneva.

Sincerely,

ESB:mmr

vc: Mrs. S. G. Power
Dr. J. H. Bryant